

FILED

APR 08 2019

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

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10 Tim Messer Construction Inc.

11 UNITED STATES BANKRUPTCY COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN FRANCISCO DIVISION

14 **In Re**

15 **PG&E CORPORATION**

16 **and**

17 **PACIFIC GAS AND ELECTRIC**
18 **COMPANY,**

19 **Debtors.**

20 Bankruptcy Cases
21 19-30088-DM (Lead Case)
22 19-30089-DM

23 (Jointly Administered)

24 **NOTICE OF CONTINUED PERFECTION**
25 **OF MECHANIC'S LIEN PURSUANT TO 11**
26 **U.S.C. § 546(b)(2)**

27 Affects PG&E Corporation
28 Affects Pacific Gas and Electric
29 Corporation
30 Affects both Debtors

31 **All papers shall be filed in the Lead Case
32 No. 19-30088 DM

33 1. TIM MESSER CONSTRUCTION INC., A CALIFORNIA CORPORATION ("Messer
34 Construction"), by and through its undersigned counsel, gives notice of continued perfection of its
35 mechanic's lien ("Mechanic's Lien") under 11 U.S.C. § 546(b)(2), as follows:

36 2. Messer Construction entered into a contract ("Contract for Work of Improvement")
37 with PG&E Corporation and/or Pacific Gas and Electric Co. (collectively, the "Debtors") to provide
38 labor, services, equipment, and/or materials for a work of improvement on real property located at the
39 Helms Pumped Storage Facility, 66898 McKinley Grove Rd., City of Shaver Lake, 93664 County of
40 Fresno, State of California (the "Property") owned by the Debtors.

1 3. The principal sum, exclusive of interest and other charges, that is currently due and
2 owing to Messer Construction for the labor and materials provided to the Debtors pursuant to the
3 Contract for Work of Improvement is \$487,300.33.

4 4. On March 28, 2019, Messer Construction perfected its Mechanic's Lien under
5 California Civil Code §§ 8400, *et seq.* by timely recording its Mechanic's Lien (Claim of Lien) in the
6 Official Records of Fresno County, State of California, as more fully described in its Mechanic's Lien.
7 (A true and correct copy of Messer Construction's recorded Mechanic's Lien claim is attached hereto
8 as Exhibit "A" and is incorporated herein by reference).

9 5. Under § 8460 of the California Civil Code, a mechanic's lien claimant must commence
10 an action to enforce a lien within 90 days after recordation of the claim of lien.

11 6. The automatic stay pursuant to 11 U.S.C. § 362 precludes Messer Construction from
12 filing a state court action to enforce its Mechanic's Lien. However, § 546(b)(2) of the Bankruptcy
13 Code states that when applicable law requires seizure of property or commencement of an action to
14 perfect, maintain, or continue the perfection of an interest in property, and the property has not been
15 seized or an action has not been commenced before the bankruptcy petition date, then the claimant
16 shall instead give notice within the time fixed by law for seizing the property or commencing the
17 action. (*See* 11 U.S.C. § 546(b)(2); *see also In re Baldwin Builders (Village Nurseries v. Gould)*, 232
18 B.R. 406, 410-411 (9th Cir. 1999).

19 7. Accordingly, Messer Construction hereby provides notice of its rights as a perfected
20 lienholder in the Property pursuant to California's mechanic's lien law. Messer Construction is filing
21 and serving this notice to preserve, perfect, maintain, and continue the perfection of its lien and its
22 rights in the Property to comply with the requirements of California state law, 11 U.S.C. §§ 362(a),
23 362(b)(3), and 546(b)(2) and any other applicable law. This notice constitutes the legal equivalent of
24 having commenced an action to foreclose the lien in the proper court. By this notice, the Debtors and
25 other parties in interest are estopped from claiming that the lawsuit to enforce Messer Construction's
26 Mechanic's Lien was not timely commenced pursuant to applicable state law. The interests perfected,
27 maintained, or continued by 11 U.S.C. § 546(b)(2) extend in and to the proceeds, products, offspring,
28 rents, or profits of the Property.

1 8. Messer Construction intends to enforce its rights under the Mechanic's Lien to the
2 fullest extent allowed under the law. This Notice shall not be construed as an admission that such
3 filing is required or to the necessity of recording, commencement, or seizure. This Notice shall
4 preserve and continue to preserve any and all of Messer Construction's rights as to its Mechanic's
5 Lien.

6 9. This Notice does not waive Messer Construction's right to seek relief from the
7 automatic stay to foreclose its Mechanic's Lien and/or a waiver of any other rights or defenses.

8 10. Messer Construction reserves the right to amend, supplement, or otherwise modify this
9 Notice and reserves any and all rights entitled to it under the applicable law.

10
11 Dated: April 4, 2019

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

12
13 By: _____
14

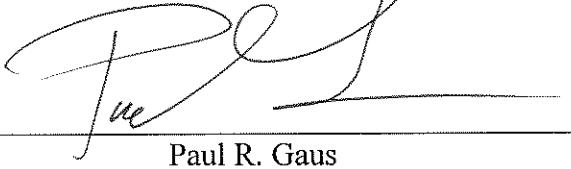

Paul R. Gaus
Attorney for Creditor
Tim Messer Construction Inc.

EXHIBIT “A”

2019-0030424

FRESNO County Recorder
Paul Dictos, CPA

Wednesday, Mar 27, 2019 01:39:59 PM

CONFORMED COPY

*Copy of document recorded.
Has not been compared with original.*

RECORDING REQUESTED BY
Paul R. Gaus

AND WHEN RECORDED MAIL DOCUMENT TO:

NAME Paul R. Gaus

STREET ADDRESS 7647 N. Fresno Street

CITY, STATE & ZIP CODE Fresno, CA 93720

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Mechanic's Lien

The undersigned, Tim Messer Construction Inc. referred to in this claim of lien as the claimant,

(Full name of person or firm claiming mechanic's lien)

claims a mechanics' lien for the labor, services, equipment and/or materials described below, furnished for a work of improvement upon that certain real property located in the County of Fresno, State of California, and described as follows:

Street Address: Helms Pumped Storage Plant, 66898 McKinley Grove Rd. Shaver Lake, CA 93664

Legal Description: _____

After deducting all just credits and offsets, the sum of \$ 487,300.33, together with interest thereon at the rate of 10% percent per annum from 01/08/2019, is due claimant for the following labor, services, Heilm's Cottages Sewer Replacement work, PG&E Contract No. C10531 and accompanying Contract Change Orders No. 1 and No. 2 executed on October 30, 2018 and equipment and/or materials: December 26, 2018.

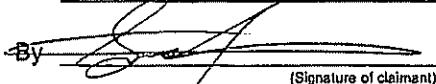
The name of the person or company by whom claimant was employed, or to whom claimant furnished the labor, services, equipment and/or materials is Pacific Gas and Electric Company

The name(s) and address(es) of the owner(s) or reputed owner(s) of the real property is/are:

Pacific Gas & Electric Company 77 Beale Street, 32nd Floor, San Francisco, CA 94105

Claimant's address is 32111 Rockhill Lane Auberry, CA 93602

Name of Claimant Tim Messer Construction Inc.

By 
(Signature of claimant)

VERIFICATION

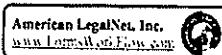
I, Stephen Ferguson, am the Authorized Agent of, Tim Messer Construction Inc.
(Title) (Name of claimant)

the claimant named in the foregoing claim of mechanics' lien; I am authorized to make this verification for the claimant; I have read the foregoing claim of mechanics' lien and know the contents thereof, and the same is true to my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 26th, 2019, at Fresno, California

Note: Proof of Service Affidavit and Notice of Mechanic's Lien Claim must be attached.



NOTICE OF MECHANICS LIEN

ATTENTION!

Upon the recording of the enclosed MECHANICS LIEN with the county recorder's office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanics lien is recorded.

The party identified in the enclosed mechanics lien may have provided labor or materials for improvements to your property and may not have been paid for these items. You are receiving this notice because it is a required step in filing a mechanics lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanics lien is released.

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANICS LIENS GO TO THE CONTRACTORS STATE LICENSE BOARD WEB SITE AT www.cslb.ca.gov.

7/1/12

American LegalNet, Inc.
www.FormsWorkFlow.com

PROOF OF SERVICE AFFIDAVIT

California Civil Code section 8416

Failure to serve the Mechanic's Lien and Notice of Mechanic's Lien on the owner, or alternatively if the owner cannot be served on the lender or direct contractor, shall cause the Mechanic's Lien to be unenforceable as a matter of law (Civil Code Section 8024(d)). Service of the Mechanic's Lien and Notice of Mechanic's Lien must be by (1) registered mail, (2) certified mail, or (3) first-class mail evidenced by a certificate of mailing, postage prepaid, and to a residence or business address for the owner, lender or contractor. Further, a Proof of Service Affidavit (below) must be completed and signed by the person serving the Mechanic's Lien and Notice of Mechanic's Lien. This page should be completed (either one of the sections below) and recorded with the County Recorder along with the Mechanic's Lien and Notice of Mechanic's Lien.

PROOF OF SERVICE AFFIDAVIT (ON OWNER)

California Civil Code section 8416(a)(7) and (c)(1)

I, Debra Ressler (name), declare that I served a copy of this Mechanic's Lien and Notice of Mechanic's Lien by registered mail, certified mail, or first-class mail evidenced by a certificate of mailing, postage prepaid, addressed as follows to the owner(s) or reputed owner(s) of the property:

Company/Person Served: Linda Y.H. Cheng

Title or capacity of person served (if appropriate): Agent for Service of Process of PG&E

Service address: 77 Beale Street, 24th Floor, San Francisco, CA 94105

Said service address is the owner's residence, place of business, or address showed by the building permit on file with the permitting authority for the work.

Executed on March 26, 2019 (date) at Fresno (city), Fresno (county), California.

91 7199 9991 7038 5801 8059

By:

Debra Ressler
(Signature of person making service)

Debra Ressler

ALTERNATE PROOF OF SERVICE AFFIDAVIT (ON LENDER OR DIRECT CONTRACTOR)

California Civil Code Section 8416(a)(7) and (c)(2)

I, _____ (name), declare that the owner or reputed owner cannot be served with a copy of this Mechanic's Lien and Notice of Mechanic's Lien by registered mail, certified mail, or first-class mail. Pursuant to California civil Code section 8416(c)(2), I served a copy of this Mechanic's Lien and Notice of Mechanic's Lien by registered mail, certified mail, or first-class mail evidenced by a certificate of mailing, postage prepaid, addressed as follows to the construction lender or direct contractor as follows:

Company/Person Served: _____

Title or capacity of person served (If appropriate): _____

Service address: _____

Executed on _____, 20__ (date) at _____ (city), _____ (county), California.

By:

Debra Ressler
(Signature of person making service)